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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/904,182	07/11/2001	Albert C. Lardo	56245	1162
21874	7590	12/18/2003	EXAMINER	
EDWARDS & ANGELL, LLP P.O. BOX 9169 BOSTON, MA 02209			SHAY, DAVID M	
			ART UNIT	PAPER NUMBER
			3739	
			DATE MAILED: 12/18/2003	

Please find below and/or attached an Office communication concerning this application or proceeding.

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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on September 3, 2003

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-12, 14-29, 31-41, 48-50 & 55-60 is/are pending in the application.

Of the above, claim(s) 1-12, 14-19, 55-57, & 60 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 20-29, 31-41, 48-50, 58, & 59 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of Reference Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

The examiner notes the following erroneous designation in restriction requirement:
claims 25-29, 48 are properly part of Group II.

Claims 1-12, 14-19, 55-57, and 60 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 8.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 is indefinite because it does not recite a positive step delimiting how the use is practical (see MPEP 2173.02 (q)).

Claims 20, 21, 24-29, 31, 32, 37-41, 48-50, 58, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motamedi et al in combination with Bryan. Motamedi et al teach photodynamic therapy to treat cardiac arrhythmias. Bryan teaches the use of MRI to locate and track the progress of tissue for photodynamic therapy. It would have been obvious to the artisan of ordinary skill to employ the imaging method of Bryan in the treatment method of Motamedi et al, since this is an appropriate imaging method for tracking photodynamic therapy as taught by Bryan or, alternatively to employ the photodynamic therapy method of Motamedi et al in the method of Bryan, since Bryan places no limits upon the specific type of photodynamic therapy that can be employed in the method, and to employ systemic infusion of the phototherapeutic agent, via the coronary artery, since this would bring the agent into contact

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with the ectopic cells most rapidly and with the greatest concentration and to monitor oxygen or phosphate concentration, since this can show the progress of treatment, as shown by Motamedi et al, thus producing a method such as claimed.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motamedi et al in combination with Bryan as applied to claim 21 above, and further in combination with Altman. Altman teaches ablating the isolate the pulmonary vein to treat arrhythmia. It would have been obvious to the artisan of ordinary skill to ablate tissue so as to isolate the pulmonary veins, since this is a source of arrhythmia, as taught by Altman, thus producing a method such as claimed.

Claims 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Motamedi et al in combination with Bryan as applied to claims 20-29, 31, 32, 37, 38, 48-50, 58, and 59 above, and further in combination with Leone. Leone teaches a porous balloon for delivering a photodynamic therapy substance. It would have been obvious to the artisan of ordinary skill to use a porous balloon to deliver the photodynamic therapy substances in the method of Motamedi et al, since Motamedi et al provide no particular delivery method, thus producing a method such as claimed.

Applicant's arguments with respect to claims 20-29, 31-41, 48-50, 58, and 59 have been considered but are moot in view of the new ground(s) of rejection.

This application contains claims 1-12, 14-19, 55-57, and 60 drawn to an invention nonelected with traverse in Paper No. 8. A complete reply to the final rejection must include cancelation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication should be directed to David Shay at telephone number 308-2215.

Shay/DI

November 20, 2003



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330